

**Sixty-seventh Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1461  
(Representatives Pollert, K. Koppelman, Louser)  
(Senators Burckhard, Klein, Wardner)

AN ACT to create and enact a new section to chapter 16.1-13 and section 44-02-03.1 of the North Dakota Century Code, relating to filling vacancies in offices of members of the legislative assembly; to amend and reenact sections 44-02-03 and 54-03-01.13 of the North Dakota Century Code, relating to filling vacancies in offices of members of the legislative assembly; and to repeal section 16.1-13-10 of the North Dakota Century Code, relating to vacancies in offices of members of the legislative assembly.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 16.1-13 of the North Dakota Century Code is created and enacted as follows:

**Death or disqualification of legislative candidate.**

If a candidate for an office of a member of the legislative assembly who has died or become disqualified for the office receives enough votes to be elected except for the death or disqualification, a vacancy in the office is deemed to exist, and must be filled according to section 44-02-03.1. If an individual elected to the legislative assembly dies or becomes disqualified after the election but before the individual's term of office begins, a vacancy in the office exists and must be filled according to section 44-02-03.1 as if the individual's term of office had begun. An individual is disqualified for an office if the individual fails to meet the qualifications under law for the office.

**SECTION 2. AMENDMENT.** Section 44-02-03 of the North Dakota Century Code is amended and reenacted as follows:

**44-02-03. Vacancy in state or district office - How filled.**

Any vacancy in a state or district office, except in the office of a member of the legislative assembly, must be filled by appointment by the governor. The governor may not fill a vacancy in the office of a member of the legislative assembly. A vacancy in the office of a supreme court justice or district court judge must be filled as provided in chapter 27-25. If during a vacancy in the office of governor, the lieutenant governor and the secretary of state are impeached, displaced, resign, or die, or from mental or physical disease or otherwise become incapable of performing the duties of the office of governor as provided by sections 2 and 7 of article V of the Constitution of North Dakota, then the succession to the office of governor is the speaker of the house, president pro tem of the senate, attorney general, in the order named. Each succeeding person named shall hold the office of governor until the vacancy is filled by election or until any disability of the preceding person in the line of succession is removed.

**SECTION 3.** Section 44-02-03.1 of the North Dakota Century Code is created and enacted as follows:

**44-02-03.1. Vacancy in legislative assembly.**

1. If a vacancy in the office of a member of the legislative assembly occurs, the secretary of state shall notify the chairman of the legislative management of the vacancy. The secretary of state need not notify the chairman of the legislative management of the resignation of a member of the legislative assembly when the resignation was made under section 44-02-02.
2. Upon receiving notification of a vacancy, the chairman of the legislative management shall notify the district committee of the political party the former member represented, or the

member-elect or deceased or disqualified candidate would have represented, in the district in which the vacancy exists. The district committee shall hold a meeting within twenty-one days after receiving the notification and select an individual to fill the vacancy. If the former member, member-elect, or deceased or disqualified candidate was elected as an independent candidate or if the district committee does not make an appointment within twenty-one days after receiving the notice from the chairman of the legislative management, the chairman of the legislative management shall appoint a resident of the district to fill the vacancy.

3. If a vacancy occurs because a member-elect died or became disqualified, or a candidate who died or became disqualified received a sufficient number of votes to be elected except for the death or disqualification, the term of an individual appointed to fill the vacancy begins on the first day of December of the year in which the vacancy occurs.
4. Except as provided in subsection 6:
  - a. If the office with the vacancy would not have been placed on the next general election ballot after the vacancy occurs had the member, member-elect, or candidate whose death, disqualification, or resignation created the vacancy been able and qualified to fulfill the term, the individual appointed to fill the vacancy shall serve until a successor is elected at and qualified following the next general election that is at least ninety-four days after the vacancy occurs.
  - b. If the office with the vacancy would have been placed on the next general election ballot after the vacancy occurs had the member, member-elect, or candidate whose death, disqualification, or resignation created the vacancy been able and qualified to fulfill the term and:
    - (1) The next general election is scheduled to take place less than ninety-four days after the vacancy occurs:
      - (a) The individual appointed to fill the vacancy shall serve until a successor is elected at and qualified following the next general election that is at least ninety-four days after the vacancy occurs; and
      - (b) The elected successor shall serve through November thirtieth of the following even-numbered year.
    - (2) The next general election is scheduled to take place at least ninety-four days after the vacancy occurs, the individual appointed shall serve until a successor is elected at and qualified following the next general election.
5. If a special election to fill the vacancy is called by the governor according to subsection 6, the individual elected at the special election shall serve for the remainder of the term of office which would have been served by the individual whose death, disqualification, or resignation created the vacancy.
6. The qualified electors of a legislative district in which a vacancy in the office of a member of the legislative assembly occurs due to the death, disqualification, or resignation of a member of the legislative assembly during the member's term of office may petition for a special election to be called by the governor to fill the vacancy. The petition must include the signatures of qualified electors equal in number to at least four percent of the resident population of the legislative district as determined by the last federal decennial census and must be presented to the secretary of state within thirty days following an appointment being made according to subsection 2. If the secretary of state determines the petition contains the required number of signatures of qualified electors of the affected legislative district, the secretary of state shall notify the governor that a special election is required to be called to fill the vacancy. Upon receiving the notice, the governor shall issue a writ of election directed to the secretary of state commanding the secretary of state to hold a special election to fill the

vacancy at a time designated by the governor. A special election under this section must conform to the applicable election deadlines found in title 16.1 and may be called to coincide with a regularly scheduled primary or general election provided the special election is called by the fifteenth day before the deadline for candidates to file for office before a regularly scheduled primary or general election. A special election under this section may not be scheduled to occur during the time from a general election through eighty days following the adjournment of the next ensuing regular session of the legislative assembly.

7. The secretary of state must be notified of an appointment made by a district committee or the chairman of the legislative management according to this section. Upon notification, the secretary of state shall issue the appointee a certificate of appointment and an oath of office for the appointee to complete and file with the secretary of state.
8. For purposes of addressing vacancies in offices of members of the legislative assembly, an individual is disqualified for an office if the individual fails to meet the qualifications under law for the office.

**SECTION 4. AMENDMENT.** Section 54-03-01.13 of the North Dakota Century Code is amended and reenacted as follows:

**54-03-01.13. Staggering of terms of members of the legislative assembly.**

1. A senator and two representatives must be elected from each even-numbered district in 2012 for a term of four years.
2. A senator and two representatives must be elected from each odd-numbered district in 2014 for a term of four years. However, a senator and two representatives from district seven must be elected in 2012 for a term of two years.
3. Except as provided in subsection 4, the term of office of a member of the legislative assembly elected in an odd-numbered district in 2010 for a term of four years and who as a result of legislative redistricting is placed in an even-numbered district terminates December 1, 2012.
4. A member of the legislative assembly who was elected from an odd-numbered district in 2010 for a term of four years and who as a result of legislative redistricting is placed in an even-numbered district may continue to serve the remainder of the term for which the member was elected beyond December 1, 2012, if the member changes the member's place of residence to a location in the odd-numbered district which is within the geographic area of the odd-numbered district from which the member was elected by March 15, 2012, and certifies in writing to the secretary of state and the chairman of the legislative management that the member has established a new residence in that district as determined by section 54-01-26. If the member does not establish residency within the district from which the member was elected by March 15, 2012, the term of office of that member terminates on December 1, 2012.
5. The term of office of a member of the legislative assembly in an odd-numbered district with new geographic area that was not in that member's district for the 2010 election and which new geographic area has a 2010 population that is more than twenty-five percent of the ideal district population terminates on December 1, 2012.
- ~~6. Notwithstanding section 16.1-13-10, a vacancy caused in an odd-numbered district as a result of legislative redistricting must be filled at the 2012 general election by electing a member to a two-year term of office.~~

**SECTION 5. REPEAL.** Section 16.1-13-10 of the North Dakota Century Code is repealed.

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Speaker of the House

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President of the Senate

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Chief Clerk of the House

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Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1461.

House Vote:    Yeas 94            Nays 0            Absent 0

Senate Vote:    Yeas 47            Nays 0            Absent 0

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2021.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2021,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State